



**US Army Corps
of Engineers ®
Norfolk District**

June 1, 2007

FEDERAL PUBLIC NOTICE

Announcing issuance of a modified State Program General Permit (07-SPGP-01) for certain kinds of work in nontidal waters and wetlands in Virginia. Effective today, 07-SPGP-01 supersedes and replaces all previous versions of this State Program General Permit.

BACKGROUND

Corps general permits are generic authorizations issued on a nationwide or regional basis by the Army Corps of Engineers for categories of activities that have minimal environmental impacts. Programmatic general permits may be issued in situations where a state, regional, or local authority has a regulatory program in place that provides a similar level of review as the Corps. In such cases the programmatic general permit avoids unnecessary duplication of effort by providing blanket Corps authorization for certain activities provided they obtain the necessary state, regional, or local authorizations.

The Norfolk District Army Corps of Engineers issued the original SPGP-01 on October 4, 2002 for certain residential, commercial, and institutional developments (Activity 1), as well as certain linear transportation projects (Activity 2), provided they meet a number of limitations and restrictions, and further provided they also receive regulatory authorization from the Virginia Department of Environmental Quality (DEQ). DEQ requested certain modifications to SPGP-01 in 2006 and the Norfolk District issued a public notice soliciting comments on the proposed modifications on December 15, 2006. Today the Norfolk District Commander, Colonel Dionysios Anninos, signed the modified SPGP as well as several supporting and decision documents. The new 07-SPGP-01, a Memorandum of Understanding between Norfolk District and DEQ, and the interagency Standard Operating Procedures are attached at the end of this Public Notice.

SIGNIFICANT CHANGES

1 - Distinctions between Categories in the previous SPGP-01 have been eliminated. If a project qualifies for 07-SPGP-01, DEQ is responsible for review of all aspects of the project and issuance of the permit with any conditions, including compensation requirements. DEQ will coordinate with the Norfolk District for the former Category C projects, but the Norfolk District will no longer issue a separate authorization for these projects.

2 – DEQ is responsible for initial screening of potential impacts to Federal threatened and endangered species. DEQ will become responsible for screening for potential impacts to historic resources after completion of a programmatic agreement among the Norfolk District, DEQ, the

State Historic Preservation Officer, and the Advisory Council for Historic Preservation. If potential impacts to threatened or endangered species or to historic resources are identified during initial screening, the Norfolk District will be responsible for addressing the requirements of Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act.

FOR THE DISTRICT COMMANDER:

J. Robert Hume, III
Chief, Regulatory Office

General Permit Number: NAO-2007-2429
Applicant: General Public in Virginia

Effective Date: June 1, 2007
Expiration Date: June 1, 2012

**Department of the Army
State Program General Permit
Commonwealth of Virginia
07-SPGP-01**

I. AUTHORITIES:

07-SPGP-01 authorizes the discharge of dredged or fill material in nontidal waters of the United States associated with certain residential, commercial, and institutional developments and linear transportation projects within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District Army Corps of Engineers (Corps). These projects must have minimal individual and cumulative impacts and meet the terms and conditions outlined herein. The use of 07-SPGP-01 shall be restricted to those projects that have avoided and minimized impacts to waters of the United States, including wetlands, to the maximum extent practicable. The Clean Water Act (CWA) Section 404(b)(1) guidelines state that no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge that would have less adverse effect on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

The people of the Commonwealth of Virginia are hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) and Section 404 of the CWA (33 U.S.C. § 1344) to perform the aforementioned work in nontidal waters and wetlands of the Commonwealth as described herein. The Corps' authority and guidance to develop general permits is contained in 33 U.S.C. § 1344(e) and 33 C.F.R. § 325.2(e)(2), 33 C.F.R. § 325.3(b), and Corps Regulatory Guidance Letter 83-7.

II. PROCEDURES:

A. Delineation Confirmations:

For any Residential, Commercial, or Institutional Development Activity or Linear Transportation Activity covered by 07-SPGP-01, a proponent must first obtain a confirmed delineation of all waters of the United States on the property prior to submission of an application. The Corps must be contacted to obtain a delineation confirmation. A confirmed delineation is not required for VDOT linear transportation projects (these projects must adhere to a separate, but similar, procedure).

B. Application:

Applicants shall use the newest version of Joint Permit Applications (JPAs), and supply drawings required by the applicable JPA, and submit these applications to the Virginia Marine Resources Commission (VMRC). **Applicants must write the letters “SPGP” clearly across the top of the first page of the application form or processing of the application may be delayed.** The applicable VWP permit regulations define the information required for a complete VWP permit application (see 9 VAC 25-210-80, 9 VAC 25-660-50, 9 VAC 25-670-50, 9 VAC 25-680-50, and 9 VAC 25-690-50). This information (the completed JPA and associated required drawings) plus a confirmed delineation from the Corps will be required to render an application complete for 07-SPGP-01 purposes. (VDOT will continue to utilize the Inter-Agency Coordination Meeting JPA.)

C. State Approvals:

In order for 07-SPGP-01 to be valid, permittees must obtain the following state approvals prior to commencement of work in waters of the United States.

- (1) VWP permit from the DEQ
- (2) VMRC permit, when required

Authorizations under 07-SPGP-01 also require that permittees ensure that their projects are designed and constructed in a manner consistent with all state and local requirements pursuant to the Chesapeake Bay Preservation Act (Virginia Code 10.1-2100 *et seq.*) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 *et seq.*). Authorizations under 07-SPGP-01 do not supersede state or local government authority or responsibilities pursuant to the Act.

D. Definitions:

For purposes of 07-SPGP-01, “loss” of waters of the United States shall be defined as filling (including placement of pipes or other water conveyances in waters) as well as other permanent adverse effects, including mechanized landclearing, excavation (including channelization), flooding, draining, including temporary flooding and draining, etc. The acreage/linear footage of loss of waters of the United States is the threshold measurement of the impact to existing waters for determining whether a project may qualify for 07-SPGP-01; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values.

For purposes of 07-SPGP-01, “natural stream design” means that the channel should mimic the dimension, pattern, and profile of a representative reference stream reach.

III. AUTHORIZED ACTIVITIES

A. Residential, Commercial, and Institutional Development Activities:

Eligibility Criteria:

- Activities that are subject to Corps jurisdiction
- Involves the discharge of dredged or fill material associated with residential, commercial, and institutional projects causing the loss of not more than one acre of nontidal wetlands or waters or the loss of not more than 2,000 linear feet of streams, unless otherwise excluded by 07-SPGP-01
- Meets the general conditions of 07-SPGP-01 listed on pages 6-13 and any special conditions required of each project-specific authorization
- Provides compensatory mitigation for unavoidable impacts to over 1/10 acre wetlands and to over 300 linear feet of stream (or mitigation for any lower level of impact if it is determined that it is necessary to ensure that a project's impacts are minimal in nature) in accordance with the mitigation standards general condition on pages 9 and 10

Discharges associated with residential, commercial, and institutional development activities include those outlined in DEQ's General Permits (see 9 VAC 25-660 *et seq.*, 9 VAC 25-670 *et seq.*, 9 VAC 25-680 *et seq.*, and 9 VAC 25-690 *et seq.*) and are associated with the following: construction or expansion of residential, commercial, or institutional building foundations, building pads, and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreational facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. For residential, commercial, and institutional developments, the aggregate total loss of waters of the United States cannot exceed one acre of nontidal wetlands or waters or 2,000 linear feet of streams.

Discharges of dredged or fill material associated with residential, commercial, and institutional activities causing the loss of more than one acre of nontidal wetlands or waters or over 2,000 linear feet of streams will require a Corps individual permit, including issuance of a public notice and full public interest review.

Proponents of residential, commercial, or institutional developments are subject to the Corps' subdivision guidance dated March 15, 1993 and June 2, 1999, or any subsequent guidance that supersedes or supplements those documents.

Federal Screening Procedures:

All residential, commercial, and institutional development activities containing impacts to over ½ acre of wetlands or waters or to over 300 linear feet of stream will be reviewed by the Corps, the U.S. Environmental Protection Agency (EPA), and the U.S. Fish and Wildlife Service (FWS).

If EPA or FWS determines that there are project specific concerns regarding avoidance and/or minimization of impacts to the aquatic environment or concerns regarding the amount

and/or type of compensatory mitigation being proposed, the applicant will be required to address those concerns. If the concerns are not addressed to the satisfaction of the objecting agency(ies), the Corps District Commander will exert his/her discretionary authority to require the project to be processed under the Corps' individual permit process.

Any Corps' concerns shall be relayed to the DEQ and addressed during the DEQ permitting process. If concerns are not satisfied through that process, the Corps District Commander may exert his/her discretionary authority to require the project to be processed under an alternate Corps permitting process, such as an individual permit.

B. Linear Transportation Activities:

Eligibility Criteria:

- Activities that are subject to Corps jurisdiction
- Involves the discharge of dredged or fill material associated with the construction, expansion, modification, or improvement of linear transportation projects not causing the loss of more than 1/3 acre of nontidal waters of the United States, including wetlands, unless otherwise excluded by 07-SPGP-01
- Meets the general conditions of 07-SPGP-01 listed on pages 6-13 and any special conditions required of each project-specific authorization
- Provides compensatory mitigation for all unavoidable impacts to wetlands and for all impacts to over 300 linear feet of stream (or mitigation for any lower level of impact if it is determined that it is necessary to ensure that a project's impacts are minimal in nature) in accordance with the mitigation standards general condition on pages 9 and 10. Stream relocation using natural stream design is considered to be self-mitigating.

Discharges associated with linear transportation projects include the construction, expansion, modification, or improvement of highways, roads, railways, trails, and airport runways and taxiways. All relocations of utility lines within the right-of-way/easements within the termini of the project are also covered under this Activity. The only lateral encroachments allowed are those that do not cause the loss of more than 1/3 acre of waters of the United States, including wetlands, involve only stream relocation (no piping or riprap of the stream bottom, etc.), and use natural stream design for the stream relocation.

Federal Screening Procedures:

All linear transportation activities involving impacts to over 300 linear feet of stream at any single impact area or containing multiple single and complete impact areas on the same project that additively exceed 1/3 acre of impact, or where lateral stream encroachments of a project cumulatively impact more than 300 linear feet will be reviewed by the Corps, the EPA, and the FWS.

If EPA or FWS determines that there are project specific concerns regarding avoidance and/or minimization of impacts to the aquatic environment or the amount and/or type of compensatory mitigation being proposed, the applicant will be required to address those concerns. If the concerns are not addressed to the satisfaction of the objecting agency(ies), the Corps District

Commander will exert his/her discretionary authority to require the project to be processed under the Corps' individual permit process.

Any Corps' concerns shall be relayed to the DEQ and addressed during the DEQ permitting process. If concerns are not satisfied through that process, the Corps District Commander may exert his/her discretionary authority to require the project to be processed under an alternate Corps permitting process, such as an individual permit.

C. Exclusions from Coverage:

The following activities and resources areas are excluded from coverage by 07-SPGP-01 and would require different types of Corps permits:

- Conversion of waters and/or wetlands for agricultural production and agriculture-related activities (crop fields or pasture); farm buildings; grain storage facilities; grassed waterways; low water crossings; impoundments for irrigation, livestock watering, and fire prevention purposes; animal feeding operations; waste storage facilities; and farm access roads
- Wetland areas composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*) (Percentages may be based on stem counts, basal area, or percent areal cover.)
- Wetland areas underlain by histosols (Histosols are organic soils that are often called mucks, peats, or mucky peats. The list of histosols includes, but is not limited to, the following soil series: Back Bay, Belhaven, Dorovan, Lanexa, Mattamuskeet, Mattan, Palms, Pamlico, Pungo, Pocaty, and Rappahannock.)
- Placement of septic tanks, establishment of drain fields, and construction of associated perimeter ditches
- Corps-regulated normal residential gardening, lawn, and landscape maintenance
- Construction of extended-detention basins and enhanced extended-detention basins designed, constructed, and maintained to function in accordance with the current Virginia Department of Conservation and Recreation (DCR) standards for such facilities or local standards that, at a minimum, meet the DCR standards, unless the area within the entire basin is considered impacted and is covered under a VWP permit
- Lateral encroachments on linear transportation projects that do not propose natural stream design to relocate impacted streams

D. Resource Areas of Special Concern:

Activities proposed in the following waters will automatically require consultation with the FWS due to Endangered Species Act (ESA) concerns:

- Powell River: From the Tennessee-Virginia state line upstream to the Route 58 bridge in Big Stone Gap and one mile upstream of the mouth of any tributary adjacent to this portion of the River

- Clinch River: From the Tennessee-Virginia state line upstream to Route 632 at Pisgah in Tazewell County and one mile upstream of the mouth of any tributary adjacent to this portion of the River (the Little River, a tributary to the Clinch River, requires consultation from its confluence with the Clinch River to its confluence with Maiden Spring Creek and one mile upstream of the mouth of any tributary adjacent to this portion of the Little River)
- North Fork, Holston River: From the Tennessee-Virginia state line to the Smyth County/Bland County line and one mile upstream of the mouth of any tributary adjacent to this portion of the River
- Copper Creek: From its junction with the Clinch River to the Route 58 bridge at Dickensonville in Russell County and one mile upstream of the mouth of any tributary adjacent to this portion of the Creek
- Indian Creek: From its junction with the Clinch River upstream to the fourth Norfolk and Western Railroad bridge at Van Dyke in Tazewell County and one mile upstream of the mouth of any tributary adjacent to this portion of the Creek
- Middle Fork, Holston River: From the Tennessee-Virginia state line to the confluence of Walker Creek in Smyth County near Marion, Virginia
- South Fork, Holston River: From the junction of the Middle Fork, Holston River upstream to the confluence of Beech Creek in Washington County

Activities proposed within the boundaries of the designated Upper New River Wild and Scenic River study area (from the Route 460 bridge over the New River near Glen Lyn, Virginia to the West Virginia/Virginia state line), and all adjacent lands subject to the study area, will require consultation with the Huntington District Corps of Engineers.

IV. INDIVIDUAL PERMIT:

Work that does not meet one or more of the terms and general conditions of 07-SPGP-01, including work that has been determined to be more than minimal in nature (at any impact level), will require consideration under a different type of Corps permit evaluation, such as an individual permit. If an individual permit is required, a public notice will be issued and a full public interest review will be conducted by the Corps.

V. GENERAL CONDITIONS:

The following conditions apply to all activities authorized under 07-SPGP-01.

1. **Other permits.** Authorization does not obviate the need to obtain other Federal, state, or local authorizations required by law or to comply with all Federal, state, or local laws.
2. **Minimal effects.** Projects authorized shall have no more than minimal individual or cumulative adverse environmental impacts, as determined by the Corps.
3. **Discretionary authority.** The Corps District Commander retains discretionary authority to require processing of an individual permit based on concerns for the aquatic environment or for any other factor of the public interest (33 C.F.R. § 320.4(a)). This authority is exercised on a case-by-case basis.
4. **Single and complete projects.** 07-SPGP-01 shall only be applied to single and complete projects. For purposes of 07-SPGP-01, a single and complete project means the total project proposed or accomplished by one owner/developer or partnership or other

association of owners/developers and which has independent utility. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as single and complete projects with independent utility. For linear transportation projects with multiple crossings, the “single and complete” project (i.e., single and complete crossing) will typically apply to each crossing of a separate water of the United States (i.e., single waterbody) at separate and distinct locations. However, in cases where there are many crossings in close proximity, numerous crossings of the same waterbody, or multiple crossings that otherwise may have more than minimal individual or cumulative impacts, the Corps has the discretion, on a case-by-case basis, to consider all of the crossings cumulatively as one single and complete project.

5. **Multiple general permit authorizations.** 07-SPGP-01 may not be combined with any Corps general permit (including Nationwide or Regional permits) for a single and complete project. However, the Linear Transportation and Residential, Commercial, and Institutional Development Activities (detailed in Section II) within 07-SPGP-01 may be combined as long as they do not cumulatively exceed the acreage limit or stream length of the Activity with the highest specified acreage limit or stream length limit.
6. **Permit on-site.** The permittee shall ensure that a copy of 07-SPGP-01 and the accompanying authorization letter are at the work site at all times. These copies must be made available to any regulatory representative upon request. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be expected to comply with all conditions of any 07-SPGP-01 authorization.

General Conditions Related to National Concerns:

7. **Historic properties.** (a) In cases where it is determined that the activity may affect properties listed, or eligible for listing on, the National Register of Historic Places, the activity is not authorized until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. (b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the Corps and/or the DEQ with the appropriate documentation to demonstrate compliance with those requirements. (c) Non-federal permittees must submit a statement regarding the authorized activity’s potential to cause effects to any historic properties listed, or determined to be eligible for listing on, the National Register of Historic Places, including previously unidentified properties. The statement must say which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location or potential for the presence of historic resources can be sought from the Virginia Department of Historic Resources and the National Register of Historic Places. Where an applicant has identified historic properties which the proposed activity may have the potential to affect, the applicant shall not begin the activity until notified by the Corps or the DEQ that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed. (d) Prospective permittees should

be aware that Section 110(k) of the NHPA (16 U.S.C. § 470(h)-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effects created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, State Historic Preservation Officer, Tribal Historic Preservation Officer, appropriate Indian tribes if the undertaking occurs on or affect historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have legitimate interest in the impacts to the permitted activity on historic properties. If the permittee, during construction or work authorized herein, encounters a previously unidentified archaeological or other cultural resource, he/she must immediately stop work and notify the Corps and DEQ of what has been found. Coordination with the Virginia Department of Historic Resources will commence and the permittee will subsequently be advised when he/she may recommence work.

8. Tribal rights. No activity authorized may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. National lands. Authorized activities shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Park, or any other area administered by the FWS, U.S. Forest Service, or National Park Service.

10. Endangered species. No activity is authorized which:

- Is likely to jeopardize the continuing existence of a threatened or endangered species, or a species proposed for such designation, as identified under the ESA, or which will destroy or adversely modify the critical habitat of such species
- Would result in a lethal or non-lethal “take” of any threatened or endangered species of fish or wildlife without an incidental take statement from the FWS

Applicants shall include, in their permit applications, information regarding the presence of any Federally listed threatened or endangered species or designated critical habitat in the vicinity of the project site that might be affected by the proposed work. Information regarding threatened or endangered species may be obtained directly from the FWS’ Virginia Field Office at 6669 Short Lane, Gloucester, VA 23061 and/or the National Marine Fisheries Service Habitat Conservation Division at James J. Howard Marine Sciences Laboratory, 74 Magruder Road, Highlands, NJ 07732.

11. Wild and Scenic Rivers. Currently, there are no designated Wild and Scenic Rivers in the Commonwealth of Virginia; however, the portion of the Upper New River from Glen Lyn, Virginia to the West Virginia/Virginia state line was designated a “study river” by Congress on October 26, 1992. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system, while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river has determined, in writing, that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic

Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Impacts that occur in these resource areas will require coordination with the appropriate Federal agency.

12. **Federal navigation project.** Authorized activities may not interfere with any existing or proposed Federal navigation projects.
13. **Navigation.** (a) No authorized activity may cause more than a minimal adverse effect on navigation. (b) The permittee understands and agrees that if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his/her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
14. **Floodplains.** All practicable efforts shall be made to conduct the work authorized by 07-SPGP-01 in a manner so as to avoid any adverse impact on the Federal Emergency Management Agency (FEMA) designated 100-year floodplain.
15. **Real estate.** Activities authorized under 07-SPGP-01 do not grant any Corps real estate rights. If real estate rights are needed from the Corps, you must contact the Corps Real Estate Office at (757) 201-7735 or at the address listed on the front page of this permit.
16. **Environmental Justice.** Activities authorized under 07-SPGP-01 must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".
17. **Federal liability.** In issuing 07-SPGP-01, the Federal government does not assume any liability for the following: (a) damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes; (b) damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest; (c) damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by 07-SPGP-01; (d) design or construction deficiencies associated with the permitted work; (e) damage claims associated with any future modification, suspension, or revocation of this permit.

General Conditions Related to Minimizing Environmental Impacts:

18. **Avoidance and minimization.** Discharges of dredged or fill material into waters of the United States shall be avoided and impacts minimized to the maximum extent practicable.
19. **Mitigation standards.**
 - *Wetland mitigation* will generally be required for all impacts over 1/10 acre on residential, commercial, and institutional development projects and for all impacts on linear transportation projects. Generally, the minimum required wetland mitigation ratios will be as follows: 2:1 for forested wetlands, 1.5:1 for scrub-shrub wetlands, 1:1 for herbaceous emergent wetlands, and 1:1 for conversion of forested wetlands to herbaceous emergent wetlands. Wetland mitigation can include wetland preservation, creation, restoration or enhancement (including restoration or enhancement of upland

forested buffers), purchase of commercial wetland mitigation bank credits, and/or contributions to the Virginia Aquatic Resources Trust Fund.

- *Stream mitigation* will generally be required for any project that involves more than 300 linear feet of stream impact. Minimum stream mitigation requirements will be determined using the current Corps and DEQ endorsed assessment methodology. Stream mitigation can include preservation of existing stream channels and riparian (wetland or upland) buffers, enhancement or restoration of existing stream channels, purchase of commercial stream mitigation bank credits, and/or contributions to the Virginia Aquatic Resources Trust Fund.
- The need to require mitigation for impacts to open waters will be determined on a case-by-case basis.
- Where local zoning ordinances provide for riparian and floodplain protection pursuant to the Chesapeake Bay Preservation Act (Virginia Code 10.1-2100 *et seq.*) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 1-20 *et seq.*), the use of buffers as a form of compensatory mitigation shall be allowed only (a) where the extent of the buffer exceeds the lateral extent already required by local ordinances pursuant to the Act and the regulations or (b) where the quality of the existing protected buffer area is enhanced to provide greater water quality protection benefits.

20. **Heavy equipment in wetlands.** Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
21. **Temporary fills.** All temporarily disturbed waters and wetlands must be restored to their pre-construction contours as soon as they are no longer needed. Once restored to their natural contours, their soil must be mechanically loosened to a depth of 12 inches and wetland areas must be seeded or sprigged with appropriate native vegetation.
22. **Sedimentation and erosion control.** Appropriate erosion and sediment controls must be employed and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark, must be permanently stabilized at the earliest practicable date.
23. **Aquatic life movements.** No authorized activities may substantially disrupt the movement of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. The Corps has determined that fish and wildlife are most often present in any stream being crossed, in the absence of evidence to the contrary.

All pipes and culverts placed in streams must be countersunk at both the inlet and outlet ends, unless indicated otherwise by the DEQ on a case-by-case basis (see below). Pipes that are 24" or less in diameter shall be countersunk 3" below the natural stream bottom. Pipes that are greater than 24" in diameter shall be countersunk 6" below the natural stream bottom. All single pipes or culverts (with bottoms) shall be depressed (countersunk) below the natural streambed at both the inlet and outlet of the structure. In sets of multiple pipes or culverts, at least one pipe or culvert shall be countersunk at both the inlet and outlet to convey low flows.

- Exemptions: Countersinking requirements do not apply to:
 - Extensions of existing pipes or culverts that are not countersunk
 - Maintenance to pipes/culverts that does not involve replacing the pipe/culvert

- Pipes that are placed above ordinary high water, such as those placed to allow for floodplain flows
 - Bottomless culverts or pipe arches
- Hydraulic capacity: Pipes should be adequately sized to allow for the passage of ordinary high water with the countersinking and invert restrictions taken into account.
- Pipes on bedrock:
 - Replacement of an existing pipe culvert: Countersinking is not required provided the elevations of the inlet and outlet ends of the replacement pipe/culvert are no higher above the stream bottom than those of the existing pipe/culvert. Documentation (photographic or other evidence) must be maintained in the permittee's records showing the bedrock condition and the existing inlet and outlet elevations.
 - Pipes in new locations: If the prospective permittee determines that bedrock prevents countersinking, they should evaluate the use of a bottomless pipe/culvert, bottomless utility vault, span (bridge), or other bottomless structure to cross the waterway, and also evaluate alternative locations for the new pipe/culvert that will allow for countersinking. If the permittee determines that countersinking is not practicable, they must include the documentation required below along with their application package.
 - Problems encountered during construction: When a pipe/culvert is being replaced and, during construction, it is found that the streambed/banks are on bedrock, then the permittee must stop work and contact the DEQ. The permittee must provide specific information concerning site conditions and limitations on countersinking. The permittee should recognize that the DEQ could determine that the work will not qualify for 07-SPGP-01.
- Emergency situations: A permittee is encouraged to countersink emergency pipe replacements at the time of the replacement, in accordance with the conditions above. However, if conditions or timeframes do not allow for countersinking, then the pipe can be replaced as it was before the washout, but the permittee will have to come back and replace the pipe/culvert and countersink it in accordance with the conditions above. The replacement of the washed out pipe is viewed as a temporary repair, and a countersunk replacement should be made at the earliest possible date. The permittee must notify the DEQ of all pipes/culverts that are replaced without countersinking at the time that the work occurs, even if the work constitutes an otherwise non-reporting activity, and must provide the planned schedule for installing a countersunk replacement (it is acceptable to submit such notification by e-mail).
- Submittal requirements: If a prospective permittee determines that countersinking is not practicable, then they must submit a narrative, along with their application, documenting measures evaluated to minimize disruption of the movement of aquatic life as well as documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. Options that must be considered include use of a bottomless pipe, partial countersinking (such as less than 3" of countersinking, or countersinking of one end of the pipe), and constructing stone step pools, low rock weirs downstream, or other measures to provide for the movement of aquatic organisms. The narrative must also include photographs documenting site conditions. The prospective permittee may find it helpful to contact their regional fishery

biologist for the Virginia Department of Game and Inland Fisheries (DGIF) for recommendations about the measures to be taken to allow for fish movement.

24. **Discharge of pollutants.** All authorized activities involving any discharge of pollutants into waters of the United States shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 U.S.C. § 1251 *et seq.*) and applicable state and local laws. No discharge of dredged or fill material in association with this authorization may consist of unsuitable material such as trash, debris, car bodies, asphalt, etc.
25. **Obstruction of high flows.** Discharges of dredged or fill material must not permanently restrict or impede the passage of normal or expected high flows.
26. **Waterbird breeding areas.** Discharges of dredged or fill material into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
27. **Native trout and anadromous fishes.** Authorizations for discharges of dredged or fill material into native trout waters or anadromous fish spawning areas are conditioned to limit in-stream work within the timeframes recommended by the DGIF.
28. **Water supply intakes.** No discharge of dredged or fill material may occur in proximity of a public water supply intake.

General Procedural Conditions:

29. **Inspections.** The permittee shall allow the Corps and/or the DEQ to make periodic inspections at any time deemed necessary in order to assure that the activities being performed under authority of this permit are in accordance with the terms and conditions prescribed herein. The Corps reserves the right to require post-construction engineering drawings and/or surveys of any work authorized under 07-SPGP-01, as deemed necessary on a case-by-case basis.
30. **Maintenance.** The permittee shall maintain the work authorized herein in good condition and in conformance with all terms and conditions of this permit. All fills shall be properly maintained to ensure public safety.
31. **Property rights.** 07-SPGP-01 does not convey any property rights, either in real estate or material, or convey any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, state, or local laws or regulations.
32. **Modification, suspension, and revocation.** 07-SPGP-01 and individual verifications under 07-SPGP-01 may be either modified, suspended, or revoked in whole or in part pursuant to the policies and procedures of 33 C.F.R. § 325.7. Any such action shall not be the basis for any claim for damages against the United States.
33. **Restoration directive.** The permittee, upon receipt of a restoration directive, shall restore the waters of the United States to their former conditions without expense to the United States and as directed by the Secretary of the Army or his/her authorized representative. If the permittee fails to comply with such a directive, the Secretary or his/her designee, may restore the waters of the United States to their former conditions, by contract or otherwise, and recover the cost from the permittee.
34. **Special conditions.** The Corps may impose other special conditions on a project authorized pursuant to 07-SPGP-01 that are determined necessary to minimize adverse navigational and/or environmental effects or based on any other factor of the public

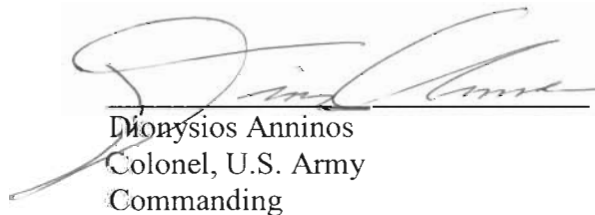
interest. Failure to comply with all conditions of the authorization, including special conditions, constitutes a permit violation and may subject the permittee, or his/her contractor, to criminal, civil, or administrative penalties and/or restoration.

35. **False or incomplete information.** In granting authorization pursuant to this permit, the Corps has relied upon information and data provided by the permittee. If, subsequent to notification by the Corps or DEQ that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the United States may institute appropriate legal proceedings.
36. **Abandonment.** If the permittee decides to abandon the activity authorized under 07-SPGP-01, unless such abandonment is merely the transfer of property to a third party, he/she may be required to restore the area to the satisfaction of the Corps.
37. **Transfer of authorization.** In order to transfer authorization under 07-SPGP-01, the transferee and permittee must supply the DEQ with a written request to undertake a transfer. Such transfer is effective upon written approval by DEQ.
38. **Binding effect.** The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.

General Conditions Regarding Duration of Authorizations, Time Extensions for Authorizations, and Permit Expiration:

39. **Duration of authorization.** Activities authorized under 07-SPGP-01 must be completed by June 1, 2012.
40. **Time extensions.** If a permittee is unable to complete the work authorized under 07-SPGP-01 in the time limit provided in the initial authorization, he/she must submit a request for a time extension to the Corps and DEQ for consideration at least one month prior to the expiration of the permit authorization.
41. **Expiration of 07-SPGP-01.** Unless further modified, suspended, or revoked, 07-SPGP-01 will be in effect until June 1, 2012. Upon expiration, it may be considered for revalidation.

6/1/07
date.


Dionysios Anninos
Colonel, U.S. Army
Commanding

Interim Standard Operating Procedures 07-SPGP-01

Initial Review of All 07-SPGP-01 Projects

1. Preapplication Consultation: The Corps will be the lead on preapplication consultations/confirmations of delineations. After receipt of a request for a preapplication/confirmation of a delineation, the Corps will assign the project a reference number (ORM identification number).

a. Prior to the submission of a permit application for 07-SPGP-01, a proponent must obtain a confirmed delineation of all Federal waters and wetlands on the property. If the Corps project manager knows in advance that a site visit will serve as a pre-application meeting (with discussion of project details, avoidance and minimization efforts, etc.), then the Corps project manager will include DEQ in the scheduling of the meeting. When the Corps project manager sets up a site visit with the project proponent and/or his/her agent to confirm a delineation of wetlands and/or waters, the project manager will invite the DEQ to attend the site visit once it's scheduled. When advising DEQ of such a scheduled site visit, the Corps will provide the DEQ the following pertinent data:

- Corps project manager name
- Date and time of the site visit
- Location of the site visit (locality name, meeting point, etc.)
- Size of the property being reviewed
- Any available information regarding work proposed to be performed on the site in the future
- The ORM reference number

Individual Corps offices should determine how best to coordinate this information with the appropriate DEQ Regional Office(s). **Corps project managers should advise DEQ of cancellation or rescheduling of any site visits to which DEQ has been invited.**

b. The Corps will confirm the limits of waters of the United States, including wetlands, on properties. In addition, the Corps will confirm delineations of isolated wetlands on properties under most circumstances, and notify the project proponent/agent and DEQ if it is unable to do so.

c. The Corps will send the project proponent a delineation confirmation letter after performing the site visit. With this letter, the Corps will include a "Supplemental Preapplication Information" form, a Corps administrative appeal form (when not prohibited by Corps Headquarters), and a printout from the Virginia Department of Historic Resources (VDHR) Data Sharing System (DSS), if historic properties are located on or near the project site. The Supplemental Preapplication Information form should indicate the presence of any Federally

listed threatened or endangered species or designated critical habitat in the vicinity of the project site, information regarding any previously-identified historic properties located on or near the project site (as identified through use of the DSS or through other knowledge), and any recommendations for site-specific avoidance and minimization of impacts to regulated aquatic resources.

2. Application: A project proponent must complete and submit the most recent version of the Joint Permit Application (JPA) to the Virginia Marine Resources Commission (VMRC) along with a confirmed delineation. Virginia Department of Transportation (VDOT) may continue to use the Interagency JPA. All applications for SPGP projects must be clearly marked “SPGP” by the applicant prior to submission. These applications will be distributed only to DEQ. If an application contains oversized drawings in conjunction with the required letter-sized drawings, the applicant should provide five copies of the oversized drawings to the VMRC for distribution to DEQ. In addition, if applicants utilize color drawings that need to be reproduced in color to maintain legibility, they must also submit five copies of each color drawing. Processing of applications will not commence until projects have been issued VMRC identification numbers and the appropriate DEQ offices have received the applications. *Sending applications directly to the DEQ and/or the Corps should be discouraged.*
3. If an application is submitted without a confirmed delineation: DEQ will send a letter to the applicant indicating all of the information lacking in the application package. Virginia Water Protection Permit (VWPP) regulations at 9 VAC 25-210-80, 9 VAC 25-660-50, 9 VAC 25-670-50, 9 VAC 25-680-50, and 9 VAC 25-690-50 indicate the requirements for complete VWPP applications. To render an application complete for 07-SPGP-01, all projects must also contain a confirmed delineation.
4. Endangered Species Act screening and coordination: DEQ will determine whether Federally listed species or Federally designated critical habitat may occur in the project’s action area. The action area is defined by regulation (50 C.F.R. § 402.02) as all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.
 - To perform initial screening, DEQ will check the county/city list(s), check the VDGIF Virginia Fish and Wildlife Information Service database using a 2-mile radius search, and check the VDCR-DNH Biotics database using a 2-mile radius search.
 - If a Federally listed threatened or endangered species is listed on a county/city list but was not identified with the 2-mile radius search, the DEQ will evaluate whether habitat for the species may be present. Appendix A, the FWS’ website species fact sheets, and information on site conditions obtained through review of delineation data sheets or from personal observation will assist with this determination. If habitat is present, the DEQ will require the applicant to survey for the species. The applicant may use a pre-approved surveyor (lists are available on FWS’ website) or may ask FWS to approve someone else. DEQ will provide a copy of all surveys to the FWS, the Corps, VDGIF, and VDCR-DNH.

- DEQ will determine which species and/or critical habitat is present in the action area, based on the database searches or surveys. The DEQ will make a preliminary effect determination for the proposed project. DEQ will send the Threatened & Endangered Species Consultation Form (T&E Form) to the Corps project manager for concurrence with DEQ's preliminary effect determination and scope of analysis. The Corps will have 15 calendar days from receipt of the T&E Form to provide DEQ with a revised determination or scope of analysis or concur. If the Corps does not respond within 15 calendar days, DEQ may assume that the Corps concurs with DEQ's effect determination and scope of analysis. DEQ will notify FWS if the scope of analysis does not include the entire action area.
 - If the Corps agrees that the project will have no effect on a Federally listed threatened or endangered species or Federally designated critical habitat, no coordination with FWS is necessary.
 - If the Corps agrees that the project is not likely to adversely affect Federally listed threatened or endangered species or Federally designated critical habitat, the DEQ will send the T&E Form to the FWS for concurrence. The FWS will have 15 calendar days to respond to the DEQ. If the DEQ does not receive a response from the FWS, they may assume the FWS has no comments. If the FWS provides project-specific conditions or alterations necessary to avoid adverse effects to federally listed species, the DEQ will have the applicant request suspension of the application while they address the FWS' concerns. Once the applicant agrees to any necessary project alterations and/or conditions, application processing will recommence. Authorization for the project will include the FWS' conditions.
 - If the DEQ determines (and the Corps concurs) or if FWS determines that the activities proposed may affect Federally listed species or critical habitat, either because of the inherent nature of the project or because the applicant has rejected the conditions or alterations necessary to avoid impacts to those species, formal consultation between FWS and the Corps will be necessary. DEQ will forward the application and all associated materials to the appropriate Corps field office and have the applicant request suspension the VWP permit application so that the Corps can complete formal consultation with FWS. The Corps will inform DEQ of any required conditions resulting from its formal consultation using the 07-SPGP-01 Special Conditions Form, and DEQ shall attach the form to the DEQ project authorization package. Those conditions shall become enforceable conditions of the 07-SPGP-01 authorization.
- VDOT may continue to perform internal review of threatened and endangered species, as long as all "no effect" determinations are supported by written determinations by FWS. These written determinations may be either e-mails or conventional letters from FWS and they must be included in the original application package to DEQ.

5. Historic properties: DEQ regional office staff will strive to forward necessary project specific information, including the Historic Resources Screening Form, to Corps project managers within seven calendar days of receipt of an application for 07-SPGP-01 (the Corps project manager's name can usually be found on the letter confirming the delineation). If the Corps project manager is unknown, the forms should be sent to the appropriate Corps Section Chief

- The Corps will review the Virginia Department of Historic Resources (VDHR) Data Sharing System (DSS) database and perform other necessary reviews. The Corps will inform the DEQ Cultural Resources Specialist (CRS) and the DEQ project manager of the results of the screening within seven calendar days of receipt of the Historic Resources Screening Form.
- If it is determined that there is no need for additional cultural resources coordination, the DEQ will continue processing the SPGP permit application.
- If it is determined that there is need for additional cultural resources coordination, the Corps will advise DEQ of this finding and will commence coordination with VDHR. The DEQ will also inform the applicant that they must request a suspension of the processing of their VWP application or DEQ's permit decision may be to deny the permit.
- Within 15 calendar days of determination that a project requires historic resources coordination, the Corps will begin the coordination process with VDHR.
 - If there is no objection from VDHR on "no historic properties affected" or "no historic properties adversely affected" based on the original project proposal, then DEQ continues to process the permit application after being notified of these findings by the Corps (Corps will send this notification to the DEQ CRS, advising the CRS of any project specific conditions necessary to ensure "no historic properties adversely affected").
 - If there is either concurrence on "historic properties adversely affected" and/or it appears that further project modifications will be necessary to minimize or avoid impacts to historic resources or mitigate impacts to historic resources, the Corps will do the following:
 - Invite the DEQ CRS to attend all meetings, site visits, and conference calls related to the historic properties consultation
 - Advise the DEQ of any project specific conditions necessary to ensure Section 106 compliance (landscape buffers needed to ensure that there are no viewshed impacts, required compliance with Memoranda of Agreement, etc.) via the 07-SPGP-01 Special Conditions Form. DEQ will reactivate VWP permit processing and include the 07-SPGP-01 Special Conditions Form with the permit authorization package.

6. Deed Restrictions

DEQ staff and the Virginia Attorney General's office, when necessary, will review and approve deed restriction language. If mitigation credit is given for deed-restricted land, the applicant must use the Corps-approved deed restriction template. If the applicant

proposes deed restriction language that substantially from the template, Corps Office of Counsel must be provided the opportunity to review and approve the proposed language.

Federal Review

The following procedures apply to projects involving:

- a) Residential, commercial and institutional development activities with total project impacts to over ½ acre of wetlands or waters or to over 300 linear feet of stream,

OR

- b) Linear transportation activities with impacts to over 300 linear feet of stream at any single impact area or containing multiple single and complete impact areas on the same project that additively exceed 1/3 acre of impact, or where lateral stream encroachments of a project cumulatively impact over 300 linear feet

DEQ shall forward a copy of pertinent portions of the application and drawings to the Environmental Protection Agency (EPA), the Fish and Wildlife Service (FWS), and the Corps. These agencies shall have 15 calendar days from the receipt of the information package from DEQ to review the project and provide any project-specific objections or concerns to DEQ, providing courtesy copies of their letters to the Corps.

- If EPA or FWS responds within the 15 calendar day timeframe and submits project-specific objections due to the proposed impacts on the aquatic environment, the DEQ will inform the applicant that they must request suspension of application processing. The suspension will allow the applicant to address these concerns to the satisfaction of the objecting agency(ies). If the applicant modifies the proposal to address these concerns to the satisfaction of the agency(ies), the DEQ will resume processing of the application. If the applicant chooses not to modify the application to address the concerns and/or chooses not to suspend processing, the DEQ will not authorize SPGP and will contact the Corps to advise them of the situation. Once the Corps is advised, the Corps will exert discretionary authority and will begin to process as an Individual Permit.
- If EPA or FWS either responds with no comments or does not respond within the 15 day timeframe, the DEQ will assume those agencies have no objections and will continue processing of the application.
- If, during the 15 day review period, the Corps has project specific concerns regarding impacts to aquatic resources (typically those regarding avoidance and minimization of impacts or mitigation proposed to compensate for unavoidable impacts), the Corps project manager will relay these concerns to the DEQ project manager and the concerns will be addressed through DEQ communication with the applicant. Furthermore, the Corps will review site-specific mitigation/stream relocation plans associated with these projects to determine the need for financial assurances. If the DEQ does not agree with the Corps' concerns regarding projects, the DEQ and Corps project managers will enter into the Dispute

Resolution Process, detailed on pages 7 and 8 of this SOP. Disagreements regarding avoidance and minimization will not delay DEQ's authorization of either the VWP permit or 07-SPGP-01.

Transfer of Information for Special Conditions for Compliance with Section 106 of the National Historic Preservation Act, Endangered Species Act, Financial Assurances, Etc.

If the Corps determines, through consultation with the VDHR or FWS, that special conditions are necessary to ensure compliance with Section 106 or ESA, or for financial assurances, the Corps project manager will send the DEQ project manager the 07-SPGP-01 Special Conditions Form (located on page 12 of this SOP) to attach to the DEQ authorization package. These special conditions will be considered enforceable conditions of the 07-SPGP-01 authorization.

Permit Decisions

1. Issuance: The DEQ will determine whether the work proposed satisfies the terms and conditions of 07-SPGP-01, through the processes outlined above. All DEQ permit authorization letters shall include the following language:

“The work authorized by this permit satisfies the terms and conditions contained in the Norfolk District, Corps of Engineers’ State Program General Permit (07-SPGP-01) and the special conditions, if any, attached to 07-SPGP-01. No additional authorization from the Corps is required. Your 07-SPGP-01 authorization is effective as of the date on this letter and remains effective until June 1, 2012.”

The DEQ project manager will attach an 07-SPGP-01 Special Conditions Form (provided to DEQ by the Corps project manager after Section 106 or ESA coordination, or for financial assurance) to the front of the copy of 07-SPGP-01 and include with the DEQ authorization package. The DEQ project manager shall then provide a copy of the authorization to the Corps. The special conditions listed on the 07-SPGP-01 Special Conditions Form shall be considered enforceable conditions of the 07-SPGP-01 authorization.

2. Denial: The DEQ project manager should advise the Corps if the project does not qualify for a VWP permit. If a project does not qualify for a VWP permit, then it does not meet the terms and conditions of 07-SPGP-01. In these situations, the Corps project manager should send a letter to the applicant allowing them to either revise their proposal so that it qualifies for a VWP and SPGP or, alternatively, allow them to go through the Corps individual permit process (in which case they would still need to obtain § 401 certification from DEQ at some point).

Dispute Resolution Process

Tier I: Monthly meetings

1. Two separate regional monthly meetings will be held on the first Wednesday of every other month for the purposes of discussing potential conflicts between the agencies. One meeting will be held in the western portion of the state and the other will be held in the central/eastern portion of the state. Projects and issues may only be presented at the monthly meeting with the approval of the immediate supervisor of both the Corps and DEQ project managers. DEQ and Corps staff must make every effort to discuss the projects and issues with their peers prior to making the decision to present a project at the meeting. Monthly meetings may be necessary if there are large numbers of projects to be presented.
2. Responsibility for the meeting organization and agenda shall alternate between the Corps and DEQ.
3. For each project to be discussed at the meeting, the Corps and DEQ project managers will create a document that includes a brief, joint statement identifying the specific points of conflict and the positions of each project manager (see the template Agenda Item document on page 11 of this SOP). The document must be submitted to the person responsible for developing the agenda no later than seven calendar days prior to the meeting. If no agenda items are received at least seven days prior to the scheduled meeting, the meeting should be canceled.
4. The affected project managers shall be in attendance at the meeting. If the affected project managers can not attend the meeting due to illness, vacation, etc., they will be responsible for finding a colleague or supervisor to represent them at the meeting. At least one VWP Regional Program Manager and Corps Section Chief shall be in attendance at each meeting. The Manager/Chief can ask a peer from another region or section to represent him or her at the meeting.
5. Corps and DEQ project managers shall jointly develop their presentations (in other words, the project managers must thoroughly discuss the disagreements beforehand so that there are no surprises at the meeting).
6. A decision, even if it is to elevate the issue to the next tier, must be made at the meeting; the discussion cannot be deferred to the next monthly meeting unless extenuating circumstances exist. The decision should be documented in the Agenda Item document for that project. The Agenda Item should be put into each agency's respective file for the project. If the decision is made that a resolution cannot be reached through informal discussion or the meeting, the parties should proceed to Tier II, below.

Tier II: Division Director / Regulatory Office Chief Review

In such cases where agreement cannot be reached informally or through the meeting, the Agenda Item document shall be forwarded within one calendar day of the meeting to the appropriate DEQ Water Division Director and the Corps Regulatory Office Chief. The

DEQ Water Division Director may delegate his/her responsibilities to the DEQ Director of the Office of Wetlands and Water Protection. The Office Chief and Division Director (or their designee) shall review the document, gather all information necessary from their respective staffs, and discuss the issue with each other. Resolution of the issue or a decision to elevate the project shall be made no later than seven calendar days after their receipt of the Agenda Item. If resolution cannot be obtained, the Agenda Item shall be documented as such, and the parties should proceed to Tier III, below. If the DEQ Water Division Director and the Corps Regulatory Office Chief both attend the monthly meeting where agreement was not reached, Tier II should be bypassed entirely.

Tier III: Norfolk District Commander / Director, Virginia DEQ

In such cases where agreement cannot be reached through Tier II coordination, the Agenda Item document shall be forwarded no later than eight calendar days after the monthly meeting to the Corps Norfolk District Commander and the Director of the Virginia DEQ. The Commander and Director shall review the document, gather all information necessary from their respective staffs, and discuss the issue with each other. Resolution of the issue shall occur no later than ten calendar days after their receipt of the Agenda Item.

If conflicts cannot be resolved through this process, or if conflicts in regulatory programs are not appropriate for this process, the Corps District Commander may exert his/her discretionary authority to require the project to be processed as an individual permit.

Compliance with 07-SPGP-01

DEQ will maintain the primary responsibility for inspection of sites permitted under 07-SPGP-01 and residential, commercial, and institutional development or linear transportation projects that have resulted in unauthorized impacts within 07-SPGP-01 thresholds. This does not, however, prevent the Corps from inspecting these project sites independently. If a Corps project manager intends to visit an 07-SPGP-01 project site, they should make every effort to contact DEQ staff prior to conducting an inspection to ensure that efforts are not unnecessarily duplicated. Once compliance inspections are performed, the agency performing the inspection shall immediately notify the other agency if it appears that the permittee does not appear to be in compliance with its permit or potentially the other agency's permit. After any compliance inspection, the agency performing the inspection should supply the other agency a copy of their site memo or field notes. Once noncompliance has been substantiated, the prospective agency will correspond with the permittee regarding the noncompliance and actions necessary to bring the projects into compliance. It is recommended that the DEQ and Corps staff work together through these processes to try to streamline the compliance efforts as much as possible (i.e., try not to make conflicting demands of the permittee, etc., in the resolution process). Disputes or conflicts may be presented via the dispute resolution process.

In situations where there are special conditions on 07-SPGP-01 to ensure compliance with Section 106 or ESA, the Corps should take the lead role on compliance with those conditions. It is appropriate to work jointly with DEQ on resolution of violations of ESA conditions, as there are likely similar conditions on the DEQ permit to ensure compliance with state endangered species laws. Both agencies should copy each other on correspondence related to all compliance issues.

SPGP Annual Report Requirements:

On an annual basis, beginning June 1, 2008, DEQ will provide the Corps a report to assess the effectiveness of 07-SPGP-01 and evaluate the extent of its cumulative impacts. Generally, the reports will be for the period of July 1 through June 30 of every year. The first yearly report will contain an extra month (June 2007). The reports will include the following information:

- Average number of calendar days between initial receipt of application and final approval
- Average number of calendar days between receipt of complete application and final approval
- Total acres of wetland impacts requested
- Total acres of wetland impacts authorized
- Total acres of wetland mitigation required, broken out into the following categories:
 - Acres of wetland preservation performed by the permittee
 - Acres of wetland creation/restoration performed by the permittee
 - Acres of wetland mitigation performed at mitigation banks
 - Acres of wetland mitigation performed through contributions to the VA Aquatic Resources Trust Fund (including total dollar amount)
- Linear feet of stream impacts requested
- Linear feet of stream impacts authorized
- Linear feet of stream mitigation required, broken out into the following categories:
 - Linear feet of stream preservation performed by the permittee
 - Linear feet of stream enhancement/restoration performed by the permittee
 - Linear feet of stream mitigation performed at mitigation banks
 - Linear feet of stream mitigation performed through contributions to the VA Aquatic Resources Trust Fund (including total dollar amount)
- Total number of projects authorized, organized by 8-digit hydrologic unit code (HUC)
- Total wetland impact acres authorized, organized by 8-digit hydrologic unit code (HUC)
- Total linear feet of stream impact authorized, organized by 8-digit hydrologic unit code (HUC)

To summarize, the report will provide data on the type, number and acreage of wetland and linear feet of stream impacts requested and authorized, the mitigation required, and the geographic distribution of the authorized impacts. This report will be advertised by public notice to provide an opportunity for the public, agencies, and interested organizations to submit comments.

DEQ / CORPS MONTHLY MEETING AGENDA ITEM

Corps Project Manager: [Name]
Section Chief: [Name]

Email address:
Email address:

DEQ Project Manager: [Name]
Regional VWP Program Manger: [Name]

Email address:
Email address:

Brief Description of Project and Identification of Points of Conflict:

[Written jointly between Corps and DEQ project managers]

DEQ Perspective

[Written by DEQ project manager]

Corps Perspective

[Written by Corps project manager]

Result of monthly meeting

[Written after the meeting]

Result of Tier II coordination *[delete if not applicable]*

[Written jointly by Division Director and Office Chief]

Result of Tier III coordination *[delete if not applicable]*

[Agenda Item Document to be submitted to person developing monthly meeting agenda no less than 7 days prior to meeting! After the meeting, the Results section is completed and a copy of the agenda is forwarded to each project manager and put into permit file. If Tier II coordination is needed, the agenda is also forwarded to the Division Director and Office Chief]



**US Army Corps
of Engineers ®
Norfolk District**

Regulatory Office

07-SPGP-01 Special Conditions

Permit number:

Date:

In addition to all general conditions of 07-SPGP-01 and conditions required of your DEQ Virginia Water Protection Permit authorization, you will be required to comply with the following special condition(s) of your 07-SPGP-01 authorization:

Failure to comply with all terms and conditions, including special conditions, of your 07-SPGP-01 authorization, may result in the Corps of Engineers taking enforcement action against you and/or your contractor.

If you have any questions about these requirements, please contact the Corps project manager listed below.

Chief, Virginia
Regulatory Section



VDEQ-WPP General Permits
Threatened & Endangered Species Consultation Form

To:

- ☐ DCR-Natural Heritage, Environmental Review Coordinator
☐ DGIF, Environmental Review Coordinator
☐ US Fish & Wildlife Service, T/E Review Coordinator
☐ US Army Corps of Engineers, [Project Manager]

Date Sent:

Date Needed:

DEQ Project Number:

From:

Site Name/Address:

Locality:

USGS Quadrangle:

Latitude/Longitude:

Waterway:

Site Owner's Name/Address/Phone Number:

Authorized Agent's Name/Address/Phone Number:

General Project Location and Description:

(include 8 1/2 x 11" drawings if sending to Corps or FWS for T&E consultation. Include database search printouts for all consultations)

General Habitat Types Present On-Site:

Project/Permit Manager's Comments:

Proposed Compensation:

Appendix A: Species-Specific Guidelines for Listed Species and Critical Habitat Review

This list provides guidance to assist project managers in determining habitat requirements of the Federally listed species that come up most often during consultation.

PLANTS

Small Whorled Pogonia, *Isotria medeoloides*, threatened

This orchid lives in a wide range of habitats. The DEQ can rule out pine plantations, old fields, agricultural lands, pastoral lands, and full sun habitats; but other than that, potential habitat should be assumed in counties/cities with known populations and adjacent counties. The survey window is small. South of Caroline County, surveys should be conducted from May 25 through July 15. In Caroline County and north, surveys should be conducted from June 1 through July 20. Surveys for potential habitat can be conducted year-round.

Swamp Pink, *Helonias bullata*, threatened

Swamp pink occurs in a variety of wetland habitats that include bogs, spring seeps, stream edges, wet meadows, and headwater wetlands. Sites are saturated year-round, but are rarely flooded and soils are generally neutral to acidic. FWS recommends a survey within appropriate habitat at the project site.

ANIMALS

Bald Eagle, *Haliaeetus leucocephalus*, threatened

Site-specific surveys are rarely necessary because nesting surveys are conducted by VDGIF and the College of William and Mary's Center for Conservation Biology. Project managers need to remember that eagle nests and eagle concentration areas have different requirements. Use the joint FWS/VDGIF document, "Bald Eagle Protection Guidelines for Virginia." Please distribute copies of the Guidelines freely. The eagle is listed under the ESA, though it has been proposed for delisting (removal from the list). Even if the eagle is delisted, it will still be protected under the Bald and Golden Eagle Protection Act (BGEPA) and the Virginia Endangered Species Law. It is not known exactly what level of protection the BGEPA will provide, but it will probably be close to the current level of protection under the ESA.

Eagle Nests

Development may occur from 1,320 feet to 750 feet (the secondary management zone) of an eagle nest as long as Time of Year (TOY) restrictions are observed on the land clearing and external construction phases. Eagle nesting season in Virginia is December 15 through July 15. If the DEQ is able to get the Applicant to agree to observe TOY restrictions on the land clearing or external construction, the project is not likely to adversely affect the eagle, and the DEQ does not need

to contact FWS. Within 750 feet (the primary management zone), the DEQ will coordinate with FWS.

Important Eagle Foraging Areas

The locations of the three important eagle foraging areas in Virginia are available on FWS's website. These areas are critical to eagle recovery, not just in Virginia, but throughout the eastern U.S. The TOY restrictions for all three areas are December 1 to February 28 and June 1 to August 31. The DEQ should coordinate with FWS for any activity on the water or within 750 feet of the shoreline within the important foraging area.

Freshwater Mussels and Fish

For any project within a 2-mile radius of a documented occurrence of these species, the DEQ must contact FWS for consultation. Based on the scope of the project and its proximity to habitat or potential habitat, FWS will determine whether a survey is needed and whether further consultation is necessary.

CRITICAL HABITAT: All critical habitat in Virginia occurs within the Upper Tennessee River Basin. Text descriptions of the critical habitat are available on FWS's web site.

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS, NORFOLK DISTRICT
AND
THE VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

PURPOSE AND INTENT

This Memorandum of Understanding (MOU) pertains to the Norfolk District Army Corps of Engineers' 2007 modification of its State Program General Permit, designated 07-SPGP-01, and describes the intent of the Norfolk District Army Corps of Engineers (Norfolk District) and the Virginia Department of Environmental Quality (DEQ) to cooperate in its efficient and effective implementation.

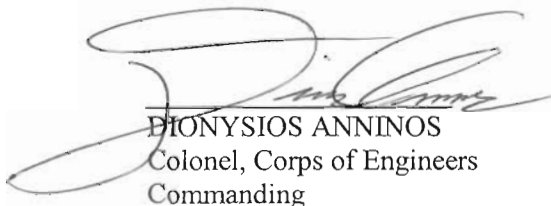
BACKGROUND

The Army Corps of Engineers regulates structures and work in waters of the United States pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) and Section 404 of the Clean Water Act (33 U.S.C. § 1344). The Commonwealth of Virginia, through the DEQ, regulates activities in Virginia's state waters pursuant to the Code of Virginia (§ 62.1-44.15:5). The regulatory jurisdictions of the Norfolk District and the DEQ overlap to a substantial degree. The Army Corps of Engineers may issue programmatic permits, as described in 33 CFR 325.5(c)(3), to avoid unnecessary duplication with other state, local, or other Federal regulatory programs. The Norfolk District issued such a State Program General Permit (SPGP-01) on November 1, 2002 for certain activities that are also regulated by the DEQ through its Water Protection Permit program. The DEQ recently requested a modification to the original SPGP-01 and that proposal was described in a public notice issued by the Norfolk District on December 15, 2006. The modified 07-SPGP-01 and its interagency Standard Operating Procedures, both attached, become effective on June 1, 2007.

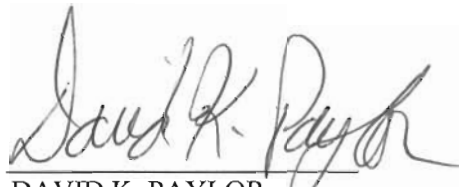
AGENCY RESPONSIBILITIES

The Norfolk District and the DEQ shall work collaboratively to implement the attached State Program General Permit 07-SPGP-01 to balance the need for economic development and the need to protect valuable aquatic resources. The agencies intend to take advantages of each others' strengths to minimize unnecessary duplication of effort, and anticipate that this synergy will allow both the Norfolk District and the DEQ to perform their regulatory duties more efficiently. Toward that end, both agencies shall follow the attached Standard Operating Procedures to the maximum practical extent, and may amend it as needed in the future with mutual concurrence.

This Memorandum of Understanding shall become effective on June 1, 2007 and remain in effect until modified or superseded, or until either (or both) of the signatories determines that it no longer serves their agency's needs, and then only after 30 days' written notification to the other.


DIONYSIOS ANNINOS
Colonel, Corps of Engineers
Commanding

6/1/2007
Date


DAVID K. PAYLOR
Director
Virginia Department of Environmental Quality

6/1/2007
Date